HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
P.O. Box 2910, Austin, Texas 78769
(512) 463-0752

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special legislative report

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THE AUGUST 1986 SPECIAL SESSION: A PREVIEW

The second called session of the 69th Legislature will convene at 10 a.m. on Wednesday, Aug. 6. It must adjourn by midnight on Thursday, Sept. 4. Gov. Mark White's call specified one general topic -- spending cuts. The call may be opened to other topics later in the session.

This report reviews proposals for reducing or eliminating the current general-revenue deficit and for easing the state's cash-flow mismatch. It discusses other possible topics that might be added to the special-session call. The report also explains special-session rules and procedures.

Ernestine Glossbrenner
Chair

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RULES AND PROCEDURES

Special sessions of the Legislature are governed by most of the constitutional and legislative rules that apply to regular sessions. In addition, there are rules that apply only to special sessions.

The Governor's Call

The Legislature may meet in special session only when called into session by the Governor. Art. 4, sec. 8 of the Constitution gives the Governor the power to call special sessions "on extraordinary occasions." The Governor's proclamation calling the session (the "call") "shall state specifically the purpose for which the Legislature is convened."

Art. 3, sec. 40 of the Constitution says that the Legislature cannot meet in special session for more than 30 days. (This means calendar days, not "legislative" days, so a session that begins on Aug. 6 must end by Sept. 4.) This section also says that "there shall be not legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to {the Legislature} by the Governor." The Governor may expand the call to include additional topics. If the session does not produce the results desired by the Governor, he may call additional sessions. Back-to-back sessions are possible.

Special-Session Subjects

Bills

The Governor's call must set forth only the "purpose for which the Legislature is convened." (Art. 4, sec. 8). The courts have held that the Governor need not "state the details of legislation..." (Ex parte Fulton, 215 S.W. 331). In an 1886 case, the Texas Supreme Court ruled that the "subject" of a special session called to reduce taxes was in fact "the whole subject of taxation," so that a bill raising taxes could also be considered (Baldwin v. State, 3 S.W. 109).

Under current judicial practice, courts would decline to investigate whether a law passed during a special session had been properly considered by the Legislature. Under the "enrolled bill doctrine," the courts will not consider questions of whether a bill that passed both Houses and was signed by the Governor complied with the procedural rules set by the Constitution (City of Houston v. Allred, 71 S.W. 2d 251; Maldonado v. State, 473 S.W. 2d 26).

The Art. 3, sec.40 limit on the subject matter of legislation considered during the session may be enforced in two ways. Of course, the Governor can always veto any bill that he did not include in his call. Also, a point of order may be raised against any bill that a legislator feels is not within the scope of the call.

According to the "Explanatory Notes" in the annotated edition of the House Rules (page 117):

> In order to abide by the spirit of this section (Art.3, sec.40) it becomes imperative that a presiding officer, as well as individual legislators, strictly construe this provision. The rule should be rigidly adhered to in special sessions of the legislature, and points of order raised against bills on the ground that they do not come within the purview of the governor's call or have not been specially submitted, should be uniformly sustained, where it clearly appears that the bill is subject to objection.

The limitation on subject matter is subject to interpretation by the presiding officer of each house. In one ruling cited by the annotated rules (page 118), Speaker Waggoner Carr cited earlier court decisions in ruling that "it was not the intention of this section to require the Governor to define with precision as to detail the subject of legislation, but only in a general way, by his call, to confine the business to the particular subjects....It is not necessary nor proper for the Governor to suggest in detail the legislation desired. It is for the Legislature to determine what the legislation shall be."

Carr ruled that amendments to a bill under consideration did not have to be weighed against the standard set by Art. 3, sec. 40. As long as the amendment was germane to the bill, and the bill itself was within the subject of the call, the amendment would be permissible.

The annotations state that the Speaker should review all bills filed with the chief clerk and admit to first reading only those that he determines are within the subjects of the call. In recent practice, however, speakers have routinely referred all bills to committee, regardless of whether their subject matter clearly comes within the Governor's call.

Resolutions

House Rule 11, sec. 7, states that "the subject matter of house resolutions and concurrent resolutions does not have to be submitted by the governor in a called session before they can be considered." This rule follows an Attorney General's opinion (No. M-309 (1968)).

Until 1972, constitutional amendments could not be proposed during a special session. In that year the voters approved an amendment to Art. 17, sec. 1, allowing constitutional amendments to be considered "at any special session when the matter is included within the purposes for which the session is convened."

Since the Governor does not have the power to veto joint resolutions (see Attorney General's opinion No. M-309 (1968)), he could not block a proposed constitutional amendment that was not with the Governor's call. Therefore, it is for the Legislature alone to decide whether a proposed constitutional amendment is within the scope of the special-session call.

Since adoption of the 1972 amendment, the precedent in the House has been for the Speaker to sustain points of order raised against proposed constitutional amendments when their subject matter is not within the scope of the Governor's call.

Time Limit on Submitting a Constitutional Amendment to the Voters

Art. 17, sec. 1 of the Constitution requires a brief explanatory statement of the nature of any proposed constitutional amendment, along with the wording of the ballot language submitting the proposed amendment, to be published twice in each newspaper in the state that prints official notices. The first publication of that notice must be made not later than 50 days before the date of the election. For any constitutional amendment to be submitted to the voters at the Nov. 4, 1986 general election, notice would have to be published no later than Sept. 15.

The Secretary of State requires some additional time to prepare the explanatory statement, which must also be approved by the Attorney General, to contract with the newspapers to publish the additional notice (this is usually done through the Texas Press Association), and get the notice to the newspapers in time for it to be published. According to the Secretary of State's office, this preparation time would take at least a week, leaving just enough time for a constitutional amendment adopted by the Legislature on the final day of a full 30-day special session to be placed on the Nov. 4 general-election ballot. However, a proposed constitutional amendment need not be submitted to the voters at a general election; the Legislature can set whatever election date it chooses, as long it does not violate the timing requirements of Art. 17, sec. 1.

Other Rules and Procedures

Bills may be prefiled 30 days before the start of the special session.

The Comptroller is required by Art. 3, sec. 49a of the Constitution to submit a supplemental revenue estimate to the Legislature prior to the start of the special session.

The Committee on State Revenue Estimates, consisting of the Governor, or an appointed representative, as chair, the State Auditor (Lawrence Alwin), and the Director of the Legislative Budget Board (James Oliver), was created in 1959 to review all revenue estimates prepared by the Comptroller and report its results publicly. The statute (VACS art. 4348a (b)) requires the Comptroller to furnish any information the committee deems necessary to clarify his revenue estimates. The committee has not met in recent years.

According to the House Business Office, House members will receive an additional $33 for office expenses for each day of the special session, a pro rata share of the additional $1,000 a month allowed by the Housekeeping Resolution for each month the Legislature is in session.

Procedural Issues Involving an Appropriation Bill

Certification by the Comptroller

Art. 3, sec. 49a of the Texas Constitution requires the Comptroller to "certify" any bill containing appropriations. The Comptroller must state that the amount appropriated is available within estimated state revenues. One question raised by the upcoming special session is whether the Comptroller must certify a bill that modifies the appropriations made by HB 20, the General Appropriations Act enacted during the 1985 regular session.

If the Comptroller must certify that the total amount appropriated, after amendments, is within his estimate of state revenues, the Legislature would have to enact budget cuts or revenue increases equal to the full amount of the Comptroller's estimated shortfall -- $2.9 billion. If certification is not required, then the Legislature could make a smaller adjustment in the state budget. For example, if certification is not required, adjustments could be made that would enable the state to avoid immediate cash-flow problems without totally eliminating the projected budget deficit for the remainder of the biennium.

Comptroller Bob Bullock wrote to Speaker Lewis and Lt. Gov. Hobby on June 27, stating his opinion that he would not have to certify a bill that reduced or reallocated current appropriations. The Comptroller relied on two Attorney General's opinions, WW-275 (1957) and O-6193 (1945), which held that reallocations of appropriations that had already been certified did not have to be certified again, since no additional funds had been taken out of the Treasury. The amendment to HB 20 would be required, even if some agencies received more money, as long as there were off-setting reductions in appropriations to other agencies in the same bill. However, the Comptroller stated that he could not determine if a certification would be required of a bill that only increased the appropriation to an agency or agencies.

Effective Date of an Appropriation Act

Art. 3, sec. 39 of the Texas Constitution states that a bill passed by the Legislature, except the general appropriation act, becomes effective ninety days after the adjournment of the session at which it is enacted. However, if a bill is declared an emergency and passes both the House and the Senate by a two-thirds vote, it becomes effective immediately.

The status of a bill amending HB 20, the General Appropriation Act, is unclear. If it is considered to be a general appropriation act, passage by a two-thirds vote of both houses would not be necessary for the the bill to take immediate effect. However, defining such a bill as an "appropriation" act could bring into play Art. 3, sec. 49a. That section of the Constitution requires that, before an appropriation act becomes effective, the Comptroller must certify that the amount appropriated is within expected state revenues (see the previous section). The entire budget shortfall of $2.9 billion estimated by the Comptroller would have to be eliminated by spending cuts or increases in revenue before the Comptroller could certify the bill and it could become effective.

If a bill amending HB 20 is not considered to be a general appropriation act, then it would have to be passed by a two-thirds vote in both the House and the Senate to become effective immediately. If the bill were passed by a simple majority, and was not to become effective until ninety days after adjournment of the special session, its effective date could be as late as December 4, 90 days after adjournment of a full 30-day special session. More than three months of fiscal year 1987, which begins September 1, 1986, would pass before amendments to appropriations for fiscal 1987 would become effective.

INTRODUCTION

In November 1985, the price of oil stood at $28 per barrel. By the beginning of this year, increased production by oil-producing countries, especially Saudi Arabia, started a steep price decline that turned into a freefall. In January, prices fell $5 in one week. By March, the price was $12 per barrel, and the steepness of the decline began to level off. After dipping below $10 in April, oil prices have fluctuated at a low level, with the price of West Texas Intermediate crude closing at $11.55 per barrel on Aug. 1.

The oil-price freefall has resulted in a severe economic slowdown in Texas that has devastated state revenues. The state has reached the point that by December 1986, even with various fiscal maneuvers at its disposal, it may not have sufficient cash available to cover its warrants.

Notwithstanding the state's need to avoid writing hot checks, the Texas Constitution does not require elimination of the budget deficit for the current biennium, currently estimated at $2.9 billion. Under Art. 3, sec. 49a of the Constitution, once the Comptroller had certified in June 1985 that estimated revenues would cover the spending program in the General Appropriations Act, the "pay-as-you-go" requirement was satisfied. Subsequent unanticipated events decreasing revenues and causing a budget deficit do not invalidate the certification. Nevertheless, the Constitution would not permit any deficit in the budget for the 1988-1989 biennium. A 1988-89 budget that removed the deficit left from the current biennium, funded all programs at 1986-87 levels, and met federal-court orders and other constitutional and statutory requirements would run a deficit of at least $5 billion, assuming revenues projected from current tax rates.

The Legislature now has short-term and long-term fiscal concerns. The immediate cash-flow problem of a mismatch of revenue inflow to spending outgo has become so severe that state checks may bounce before the Legislature meets in regular session in January. If current spending and/or revenue trends are not altered, the huge deficit looming in the future over the 1988-1989 biennium will become even more difficult to eliminate.

The greatest difficulty the Legislature faces in dealing with the fiscal shortfall may be that the shortfall has been a "moving target." Each time a plan to reduce or eliminate the budget shortfall has been developed, the shortfall has gotten worse.

The projected deficit stood at "only" $1.3 billion on February 18, when Gov. Mark White issued Executive Order MW-36 asking state agencies to reduce voluntarily their spending by 13 percent, and on March 3, when the Senate met for an emergency briefing on the shortfall. Yet by May 30, when the House met in an extraordinary briefing session on the shortfall, Comptroller Bob Bullock warned of a possible $2 billion shortfall. When the Legislative Budget Board met on June 27, the Comptroller unofficially raised his deficit estimate to $2.3 billion. As a result, Gov. White, Speaker Gib Lewis, and Lt. Gov. Bill Hobby reversed their previous position that the Legislature could wait until the regular session to deal with the problem. Yet on July 24, after state economic trends had worsened, the Comptroller changed the deficit projections yet again, to $2.9 billion.

Two principal approaches for dealing with the budget shortfall have emerged since Gov. White announced that he would call a special session. Speaker Lewis and House leaders have been calling for spending cuts and other non-revenue-raising steps to get the state over the cash-flow hump at the end of the year, leaving resolution of long-term spending and revenue questions for more intensive scrutiny during next year's regular session (the so-called "Band-Aid" solution). Lt. Gov. Hobby and Senate leaders have advocated a mixed plan of spending cuts and revenue increases to deal with the entire budget-shortfall problem during the special session. Comptroller Bullock has also stated that a revenue increase is inevitable and has discussed as one option a broadening of the sales-tax base to such an extent that the sales-tax rate might even be lowered.

Since Gov. White's special-session call currently mentions only spending cuts, that subject is the principal focus of this preview.

REVENUE ESTIMATES

The following chronology traces the frequent revision in estimates of state revenue during the first half of 1986.

$1.3 Billion Shortfall

On February 13, 1986, Comptroller Bob Bullock lowered his estimate of expected state revenue for the 1986-87 biennium by $1.3 billion. This meant that, if no changes were made in the state budget or in state taxes, the General Revenue Fund would end the biennium on Aug. 31, 1987 with a deficit of $1.3 billion. The main reason for the re-estimate of state revenues was the decline in oil prices. The revenue estimate on which the Comptroller based his certification of the budget in June 1985 assumed that Texas oil prices would average $27.44 in fiscal 1985, $25.00 in 1986, and $24.15 in 1987. The February 1986 revision assumed much lower oil prices -- $21.08 in fiscal 1986 and $15.18 in fiscal 1987. The $1.3 billion drop in revenue was estimated to come mainly from a $1.1 billion decline in the collection of the sales, oil production, and natural gas taxes.

$2.0 Billion Shortfall

On May 30 the Comptroller issued a "Report on Texas State Finances." This report maintained the forecast of a $1.3 billion shortfall in the biennial budget and did not change any assumptions concerning oil prices, the state economy, or tax collections. However, in his speech to the the House briefing on the budget on May 30, Bullock indicated that the figure of $1.3 billion was only a minimum estimate, and that the shortfall might reach $2.0 billion.

$2.3 Billion Shortfall

On June 27, in his testimony to the Legislative Budget Board, the Comptroller "unofficially" reduced his estimate of net state revenues by $1 billion from his February estimate, forecasting a $2.3 billion shortfall. Although no detailed assumptions were published, Bullock indicated that the revision was caused by spreading weakness in the Texas economy and lower projections of employment in the state. The drop in revenues was partially offset by a projected increase of $326 million in land income, primarily from money received from the federal government for Outer Continental Shelf oil and gas production, and an increase of $154 million in federal funds, which includes rebates for petroleum overcharges from the Exxon-Hawkins Field case.

$2.9 Billion Shortfall

On July 24 the Comptroller officially revised downward his February revenue estimate. The state's ending balance in all funds was forecast to fall $3.5 billion below the forecast made at the end of the regular session in 1985. The shortfall in funds affecting certification, the number comparable to the Comptroller's earlier estimates, was put at $2.9 billion -- an increase of $600 million over the unofficial estimate of a month before. The oil prices assumed in the July estimate were little changed from the prices used in earlier forecasts -- $20.66 in fiscal 1986 and $15.11 in fiscal 1987. However, assumed levels of Texas personal income, nonfarm employment, and retail sales were lower than in previous estimates. Most of the difference between the June and July estimates was due to losses in revenue from the sales tax, corporate franchise tax and motor vehicle registration fees.

Compared to the revenue estimate used to certify the biennial budget in June 1985, the greatest loss of revenue is an expected drop of $1.35 billion in sales-tax revenue, a loss of 13.8 percent. The largest percentage decreases in expected income are a 31.0 percent reduction in natural-gas tax collections (a $632.4 million drop) and a 25.5 percent reduction in oil production tax collections (a decrease of $428.8 million). The forecast of total revenue affecting certification made in July 1986 was 12.6 percent lower than the forecast of a year earlier. However, total state revenues for 1986-1987 are still expected to be 5.5 percent greater than total state revenues in 1984-1985.

The Controversy over "Pending Issues"

A key factor in the July estimate was the inclusion of "pending issues" in the revenue forecast that were not taken into account in earlier estimates. The issues involve pending court cases concerning refunds of disputed oil, franchise, and sales taxes paid to the state, an increase in tax credits claimed by insurance companies, and a refund of interest on local tax trust accounts. These issues would account for $420 million. (An additional pending issue, possible Gramm-Rudman cuts in federal funds received by the state, does not affect general revenue.) If the pending issues were eliminated from the revenue estimate, the estimated closing balance in the General Revenue Fund at the end of the biennium (the "shortfall") would be $2.44 billion, rather than the $2.86 billion estimated by the Comptroller.

Legislative Budget Office director Jim Oliver testified before the Legislative Budget Board on July 25 that the timing of when these items might affect state revenues was uncertain. A spokesman for Attorney General Jim Mattox stated that none of the pending court cases would be lost, and in any case none would be concluded during the biennium.

DEDICATED AND LOCAL FUNDS

Dedicated Funds

A large proportion of the state budget is allocated by constitutional or statutory provisions, including funding formulas. Other expenditures are required by federal law or court decisions. These constraints make large immediate changes in the state budget more difficult to make.

According to the Legislative Budget Board, 25.0 percent of appropriations from general-revenue-related funds for fiscal 1987, or $3.32 billion, is determined by constitutional dedications. The largest dedications are to the Highway Department ($1.42 billion), the Foundation School Program ($1.07 billion), and the Teacher Retirement System ($546 million).

Another 33.4 percent of general-revenue-related appropriations for fiscal year 1987, or $4.47 billion, is governed by statutory provisions. By far the largest statutory allocation, $3.78 billion, is to the Foundation School Program to finance the cost of each district's program not covered by other funds. Most of this allocation is determined by formulas, such as those intended to aid small or sparsely populated school districts, compensate high-cost urban districts, or encourage retention of experienced teachers. Other statutes dedicate revenue to the Highway Department ($218 million), the Teacher Retirement System ($182 million), the Optional Retirement System ($109 million), state payment of part of employees' contribution to Social Security ($109 million) and other smaller programs.

Other statutory formulas influence 17.0 percent, or $2.28 billion, of general-revenue-related appropriations for fiscal 1987. The public senior colleges and universities are allocated $926 million by formula, Medicaid programs receive $704 million, and public junior colleges get $432 million. Formulas also influence appropriations of $133 million to Aid for Families with Dependent Children (AFDC) programs and $87 million for group health insurance for certain state employees.

Federal law, regulations, or court decisions control 9.6 percent, or $1.28 billion, of general-revenue-related appropriations for fiscal 1987. Federal court orders determine appropriations to two large state agencies, the Department of Mental Health and Mental Retardation ($615 million) and the Department of Corrections ($424 million), plus the Texas Youth Commission ($51 million). Expenditures on matching payments to Social Security of $194 million are also determined by federal law.

Appropriations that are constitutionally or statutorily dedicated, influenced by formulas, or controlled by federal law total 85.0 percent of fiscal year 1987 expenditures from general-revenue-related funds. This leaves 15.0 percent of the state budget that is immediately available for reduction in a fiscal emergency without statutory or constitutional change. Total elimination of this entire portion of the budget for all of fiscal 1987 would still fall short of avoiding a deficit at the end of the 1986-87 biennium.

The House Appropriations Committee has appointed a Subcommittee on Dedicated and Local Funds, chaired by Rep. Mike Toomey, to study these constraints in the state budget. On July 11 the subcommittee issued a preliminary report on dedicated funds, which concluded that automatic dedications of revenue have limited legislative discretion and hindered adjustment to changes in the state's revenue projections.

The Toomey subcommittee recommended that the constitutional and statutory dedications of revenue should be reviewed. The subcommittee also recommended that the Appropriations Committee consider recommending an amendment to the House rules to require a two-thirds vote to pass a bill creating a special fund or dedicating revenue.

The subcommittee found that the large number of funds in the state treasury complicate accounting and financial management, forcing the General Revenue Fund to borrow from other state funds to maintain a cash balance. The existence of special funds also influences budget decisions, according to a Legislative Budget Office study cited by the subcommittee. Agencies funded by special funds were found to grow twice as fast over the past ten years as agencies funded from general revenue.

Local Funds

The state's institutions of higher education receive "local income" in addition to money appropriated by the Legislative. This income comes from student fees, such as building use fees and lab fees, dormitory rents, gifts from benefactors, income from athletic events, and other sources. The local funds system is intended to allow universities to cover the costs of programs not directly related to their educational programs. The various boards of regents or trustees control these funds and generally determine how the money is spent or invested. Local funds are held outside the state treasury, and investment earnings are retained in these local accounts. Local funds are therefore not available for the interfund borrowing the Treasury performs to avoid cash-flow problems.

According to a report by the State Auditor's Office to the Subcommittee on Dedicated and Local Funds, at the end of fiscal 1985 institutions of higher education had $1.45 billion in local funds held outside the State Treasury. About one-third of this amount, or $509 million, was held by medical institutions, with the remaining $943 million held by academic institutions. Some $780 million in local funds were unrestricted and available to fund future operations and projects at the discretion of the institution. The remaining local funds were already encumbered or set aside as reserves.

A special financial report issued by the Comptroller in March, 1985 had estimated that the universities had more than $2.2 billion in their local balances at the end of fiscal year 1984.

The Senate Committee on Agency Funds Management, chaired by Sen. John Leedom, has also considered fund management and investments by institutions of higher education. That committee recommended in November 1984 that the Education Code be amended to specify that certain local funds should be deposited in the state treasury and invested by the Treasurer.

LEGISLATIVE BUDGET OFFICE BUDGET-CUTTING PROPOSALS

At the request of the House Appropriations Committee, the Legislative Budget Office has prepared alternative proposals for reducing appropriations for fiscal 1987. The proposals prepared by the LBO were not recommendations but a demonstration of how cuts could be made to reach various spending levels. The LBO staff presented the alternative proposals for reducing fiscal 1987 appropriations to the House Appropriations Committee during a series of meetings the week of July 20 and to the July 25 meeting of the Legislative Budget Board.

The budget-cutting proposals made by the LBO were identified as levels I, II, III, and IV:

-- Level I would reduce total appropriations by $755 million, and appropriations to agencies by $386.1 million. The proposed cuts in agency budgets at this level are identical to those made by the agencies in response to Gov. White's executive order MW-36, requesting budget cuts of 13 percent.

-- Level II would reduce total appropriations by $1.27 billion, and appropriations to agencies by $620 million. Cuts at this level are intended to avoid immediate cash-flow problems.

-- Level III would reduce total appropriations by $2.19 billion, and appropriations to agencies by $1.18 billion. At this level budgets for almost all agencies would be cut by 34 percent.

-- Level IV would reduced total appropriations by $2.95 billion, and appropriations to agencies by $1.18 billion. No additional cuts in agency budgets would be made at level IV, but greater reductions would be made in funding for the Foundation School Program and in contributions to state retirement systems.

Some Notable Impacts on Programs

Largest Percentage Reductions

Under the alternative proposals for reducing 1987 agency appropriations presented by the Legislative Budget Office, four agencies would lose all state funding, and two others would lose more than half of their funding from the General Revenue Fund:

-- Under the LBO level I proposal, the Texas Public Building Authority would rely exclusively on bond proceeds to fund administration, eliminating $242,000 in funding from the General Revenue Fund.

-- The Natural Fibers and Food Protein Commission would be eliminated at level II, cutting 100 positions and $1.5 million. The commission funnels money for research on the state's natural fiber resources to four universities. The universities could choose to continue the programs with their own funds.

-- All $2.15 million in state funding and 98 full-time equivalent positions at the Rodent and Predatory Animal Control Service would be eliminated at level II. Since the service is a cooperative venture under the joint sponsorship of the federal government, the state, and local cooperating agencies, the program would not be completely shut down, although its ability to provide services would be reduced.

-- The duties of the State Ethics Advisory Commission would be carried out by the Secretary of State or the Attorney General under the level II proposal, eliminating the current $57,000 appropriated to the commission.

-- At level I, the Department of Community Affairs would lose 69 percent of its fiscal 1987 general-revenue appropriation of $542,005. However, the LBB expects that there would be no impact on direct services, since the reduction would be covered by staff attrition and limitations on travel. At level III, the remainder of the department's general-revenue appropriations would be eliminated and replaced by the department's Earned Federal funds without affecting its direct services.

-- At level II, the Texas Aeronautics Commission would lose two-thirds of its funding, a cut of $2.16 million. Most of this reduction, $1.74 million, was appropriated for grants from the aviation facilities development program for construction and improvements to airports in the state.

-- General revenue appropriations to the Office of the Governor would be cut by more than one-half at level II. The largest single cut would be the elimination of general-revenue funding for assistance to regional planning commissions, representing about five percent of the total budget of the commissions. This would delay state planning grants that provide administrative staff and matching requirements for various federal programs.

Selected Reductions at Level II -- $1.3 Billion

Under the level II proposals, most agencies would undergo cuts of less than 20 percent. However, certain programs would be more severely affected, losing $2 million or more.

State aid to the Adult Probation Commission to support misdemeanor probation services would be eliminated, at a savings of $10.2 million in fiscal 1987. A rider to the General Appropriations

Act in 1985 indicated the Legislature intended to eliminate state aid for misdemeanor probation services at the end of fiscal 1987.

Nursing home vendor payments by the Department of Human Services would be reduced by $9.4 million by eliminating proposed 1987 rate increases. The LBO notes that this would reduce the ability of private providers to provide quality care and still make a profit. The loss of $9.4 million in state aid would trigger a loss of $11.5 million in federal funds -- the total program reduction would be $20.9 million. The $4 million appropriated in the Indigent Health Care and Treatment Act to compensate hospitals with a high volume of indigent patients would be cut in half, to $2 million, the budgeted level in fiscal 1986.

General revenue appropriations for case services of the Vocational Rehabilitation Program of the Texas Rehabilitation Commission would be reduced by $2.0 million. The LBO staff estimates that 3,200 disabled persons would not receive vocational rehabilitation services, and 1,500 fewer clients would be rehabilitated. In addition, the Texas economy would lose an estimated $14 million a year, based on the average earnings of a rehabilitated client.

Appropriations of $2.4 million to the Animal Health Commission for vaccinating calves for brucellosis would be eliminated, causing fewer heifers to be vaccinated and risking greater losses due to possible spread of the disease.

Other programs that would lose more than $2 million under level II proposals include support and traffic law enforcement by the Department of Public Safety and certain institutional services at the Texas Youth Commission. These cuts are detailed in the section on workforce reductions (see page 17).

The appropriations to many institutions of higher education would be reduced by more than $2 million under level II proposals. Most of these cuts would be across-the-board general-revenue reductions that could be absorbed throughout each institution, but some specific programs would be targeted for large cuts. Tuition equalization grants through the Coordinating Board, Texas College and University System, which subsidize tuition at private universities, would be cut by $2.2 million, eliminating grants for 1,800 students, or reducing the average grant by 13 percent. Funding for organized research at the University of Texas at Austin would be reduced by $2.6 million, and funding for the McDonald Observatory would be cut by $2.1 million. At the University of Texas Medical Branch at Galveston, the Marine Biomedical Institute would lose all of its $2.4 million appropriation and the $2.2 million appropriated for the Chronic Home Dialysis Center would be eliminated.

Level III Reductions -- $2.3 Billion

At level III, appropriations to virtually all state agencies would be reduced by 34 percent, resulting in an extensive loss of services and employee layoffs. Appropriations would not be reduced, or would be reduced by less, for those agencies that have dedicated funds or that are under federal-court order or federal regulation. For example, the Texas Department of Corrections, currently under federal-court order to upgrade its facilities and increase it personnel, would not be cut. No agency reduction was proposed for the Comptroller's office for fiscal agents programs and for the State Treasurer's office for state road aid grants to counties.

Under level III, some agency appropriations would be reduced less than 34 percent. Appropriations to the Real Estate Commission would be reduced by 13.8 percent, to the Department of Health by 9.7 percent, and to the Comptroller's office by 10.1 percent. The Parks and Wildlife Department would lose 4.4 percent of its appropriations, The Texas Youth Commission would lose 8.0 percent, and the Department of Mental Health and Mental Retardation would lose 3.7 percent. The TYC and TDMHMR are under federal-court order to upgrade facilities.

Earned Federal Funds

Earned Federal funds are the interest the state has earned over the years from investing federal-grant money. Federal grants to the state arrive in lump sums that cannot be spent all at once, so they are invested by the State Treasury. The interest that accrues is retained in each agency's account. Some Earned Federal funds are amounts left over for overhead and indirect costs associated with federal grants. The Department of Human Services and the Department of Health have accumulated Earned Federal funds because they receive large federal grants for such programs as Medicare, Medicaid, and Aid to Families with Dependent Children.

The Legislative Budget Office proposals to reduce the appropriations for fiscal 1987 would substitute Earned Federal funds for state general revenue. Under the proposed Level I reductions, the Department of Human Services would use $65.1 million in Earned Federal funds to finance its operations for fiscal 1987. Also, under the proposed level II reductions, the Department of Community Affairs would replace general-revenue appropriations for administration and for local government services and community development with $168,000 in Earned Federal funds.

Under Level I, the Department of Health would replace $3.4 million in general-revenue money with Earned Federal funds. The Department of Health had planned to use its $3.4 million in Earned Federal funds partially to offset potential Gramm-Rudman budget reductions in fiscal 1987. The Legislative Budget Office estimates if Gramm-Rudman is fully implemented, the Maternal and Child Health program would be reduced by $2.8 million. The Crippled Children's program would be reduced by $0.9 million, which would limit medical and rehabilitative services. Title X Family Planning would lose $1.8 million and be forced to limit the number of people it would serve. The Communicable Disease Control program would loose $1 million, which could affect the number of antigens administered and could reduce all sexually transmitted disease programs.

The use of Earned Federal funds to reduce general revenue would be a one-time event. Once these funds have been spent, they will not be replenished, because the federal government is scheduled to begin using electronic transfer of funds. Electronic transfer of federal-grant money means the state will no longer have the opportunity to earn interest on federal grants because the money will be doled out from the federal government as needed, rather than in large allotments as before. Thus the federal government will earn any of the interest on the funds, not the state.

Reduction in the Number of State Employees

The Number of Jobs Eliminated

The budget-cutting options presented by the Legislative Budget Office would decrease the number of state employees. This decrease could be accomplished by attrition (not replacing employees who leave voluntarily), by encouraging early retirement, and by layoffs. In addition, the LBO proposals at levels II, III, and IV would eliminate the three-percent salary hike scheduled for fiscal 1987, saving an estimated $70 million.

Level I reductions

The reductions proposed at level I are identical to the reductions made by state agencies in response to Governor White's executive order MW-36, requesting agencies to reduce spending for the biennium by 13 percent. The LBO has estimated that these reductions would result in a decrease of at least 3,409 full-time employee positions, a 2.1 percent reduction from the current 165,300.

By far the largest number of positions affected at level I would be at the 36 senior state universities, the Coordinating Board, Texas College and University System, and state museums. Based on the proportion of salaries to the total budget of these institutions, the LBO estimates that 1,657 positions would be eliminated. Another 791 positions will be eliminated at the state medical schools. These two groups would account for more than 70 percent of all positions lost by state agencies. The LBO expects that most of these positions would be eliminated by attrition.

The Department of Human Services is expected to lose 404 positions at level I. This estimate is based on the administrative savings proposed by the department in response to MW-36. The Comptroller laid off 134 employees on July 22. The Parks and Wildlife Department anticipates eliminating 87 positions, the Texas State Technical Institute System Administration, 63 positions, and the Texas Central Education Agency, 62 positions. Also, many agencies are listed by the LBO as losing an undetermined number of positions.

Level II reduction

At level II at least another 4,904 full-time employee positions would be eliminated, for a total of 8,313 positions, or 5.0 percent of the state government workforce. As at level I, by far the largest number of positions specified by the LBO would be lost by the senior universities and medical schools -- nearly 60 percent of the total estimated reduction. The LBB estimates that 1,839 additional positions would be eliminated at the universities, Coordinating Board, and state museums, and 1,067 additional positions at medical schools. Since institutions of higher education have some flexibility in internal management, the LBO could not provide details as to which positions would be eliminated.

The LBO was not able to estimate job losses at 13 state agencies at level II. Of the agencies for which estimates were provided, the largest loss would be from the Texas Agricultural Extension Service, at which 320 positions would be eliminated. Family living programs of the extension service would lose 178 full-time employee positions, 4H Club and youth work programs would lose 95 positions, and community resource development would lose 31 positions. If statutes affecting the Texas Youth Commission were changed to prevent certain probation revocations and if certain misdemeanor offenders were paroled, one facility could be closed, eliminating 185 positions.

Cancellation of two recruit-training schools by the Department of Public Safety would cause 180 trooper vacancies, based on proposed level II cuts. The Department of Mental Health and Mental Retardation would lose at least 176 positions. A reduction in central office expenditures by MHMR would eliminate 70 administrative employees, contracting for outside barber and cosmetology services at state hospitals and state schools would replace 68 positions, and using chaplains from the community would eliminate 37 positions. Other agencies that were estimated to lose more than 100 positions under level II reductions are the Railroad Commission, the Alcoholic Beverage Commission, and the Texas Forest Service.

Level III and IV reductions

At levels III and IV at least another 10,948 positions would be eliminated, for a total estimated job-loss of 19,261 -- 6.6 percent of the total number of full-time employee positions in the state budget. At these levels the budgets of almost all state agencies would be cut by 34 percent. The LBO assumed that the state universities would eliminate 3,983 more employees at levels III and IV than at levels I and II, and the medical schools another 2,477 employees. These institutions would account for 60 percent of the additional layoffs at levels III and IV, and 61.3 percent of the total number of state employees eliminated at level III and IV reductions.

The Department of Public Safety would lose at least an additional 732 positions at levels III and IV. Support services, including crime lab services, would be reduced by 285 positions, and 375 employees involved in traffic law enforcement would be eliminated. The Department of Human Services would lose 342 employees, including 288 involved in employment services and family self-support services. At the Texas Youth Commission 278 positions would be lost due to the closing of the Corsicana State Home, the abolition of juvenile parole services, and the reduction in the minimum length of commitment at Giddings State School for violent offenders. Agricultural research projects at the Texas Agricultural Experiment Station would lose 260 employees. Other agencies that are expected to lose more than 200 positions under level III and IV reductions would be the Office of the Attorney General, the State Purchasing and General Services Commission, and administrative programs of the Texas Central Education Agency.

Higher Education Reductions

The LBO did not give details of the effect the cuts would have on institutions of higher education at levels III and IV, but described the cuts as "across-the-board general revenue reductions to reach 34 percent." However, the Coordinating Board, Texas College and University System, has released its own projections of the effects of a 34 percent cut in general-revenue funding. According to the Coordinating Board, 23,500 faculty and staff positions would be eliminated, and all state aid for research at state universities would be reduced to zero. To avoid faculty lay-offs, the average faculty salary would have to be cut to about one-half the average salary in the ten most populous states, risking the loss of the best faculty and staff. Most programs would be cut, reducing indigent health care, rural medical care, job training programs, and summer classes. The board warned that many students would be turned away from public universities, and 5,000 students attending independent colleges would lose their Tuition Equalization Grants. According to the Coordinating Board, such reductions "would erase the progress Texas colleges and universities have made over the past decade" and "remove this state from the mainstream of higher education in the nation."

The Cost of State Employee Layoffs

The state would save money by not paying the salaries and benefits of laid-off employees, but there are also costs in eliminating workers. A state employee is entitled to a lump-sum payment of accrued annual leave upon leaving state employment. An employee may also withdraw contributions to the Employees Retirement System (ERS), although this affects ERS and not the state budget. State agencies experiencing layoffs have in the past sometimes paid for counseling and job placement services for departing workers. Agencies experience additional administrative costs in the bookkeeping necessary to adjust payrolls. Layoff programs in other states have also provided severance pay.

Under one recently cited estimate, the cost of laying off a state employee might be as high as $21,500. That estimate was first made by Steve Pruitt, Congressional Affairs Representative for the Public Employees Department of the AFL-CIO, in a presentation to the National Conference of State Legislatures' annual meeting in July, 1982. Included in this figure is payment of severance pay equaling one week of pay for each year of service and payment of accrued sick leave. Texas state employees are not entitled to such payments, so the cost of eliminating a state worker in Texas would be expected to be much lower.

Rep. Lloyd Criss estimated in December 1985 that state employee lawsuits and employee turnover cost the state some $47 million in fiscal 1985. This figure was based on classified employees, about half the state's workforce. The bulk of this total, some $38 million, was attributed to the administrative costs of replacing lost employees, including hiring, training, and orientation. This cost would not be incurred if the actual number of state employees were being reduced. The costs of production lost in turnover time was calculated at $7 million, which accounted for most of the rest of the total cost. Other costs included unemployment benefits, grievance-related judgments against the state, and attorney's fees incurred in defending grievance cases.

A paper prepared in 1979 for the Select Committee on State Employee Productivity by the Austin Chapter of the American Society for Training and Development estimated that between $37 million and $42 million was spent replacing state employees during the previous year. This estimate was based on a rule-of-thumb that the costs of recruitment, hiring, processing of paperwork and the loss of productivity involved in placing a new employee on the state payroll are equal to twice the monthly salary of the new employee. The total assumed an average monthly salary of $794. The current average for a classified employee is $1,650, leading to a much higher estimate under this method. On the other hand, if laid-off employees are not replaced, there would be no cost in recruitment and hiring of a new employee.

Elementary and Secondary Education

The Legislative Budget Office offered two options for reducing the Foundation School Program for fiscal 1987 at levels II, III, and IV. Both options would make roughly equal reductions but in different ways. No reductions in the Foundation School Program were proposed at level I.

The Foundation School Program

The state Foundation School Program is the state's vehicle for funding local schools. The financing mechanism uses a basic-entitlement plan augmented by special allotments. Each school district receives a base-dollar amount, called a basic allotment, for each student. The basic allotment is then adjusted by several formulas, which can increase the amount of state assistance sent to a district. A price-differential formula sends more aid mainly to urban districts where the higher cost of living requires higher costs and salaries, while a small-district formula sends extra aid to districts with 1,600 student or less.

In addition to its basic adjusted allotment, each school district receives special allotments for students enrolled in programs of special, compensatory, bilingual, and vocational education. The amount of these allotments is calculated by assigning a "weight" to each program, which is multiplied by the adjusted-basic allotment for each student enrolled in the program. For example, for each student enrolled in a compensatory-education program providing remedial classes, a district is entitled to an allotment equal to the adjusted basic allotment multiplied by 0.2.

The state grants allotments to school districts for other reasons, such as the experienced-teacher allotment used to help hire and retain experienced teachers and to support the new career-ladder program. The career ladder is a merit-pay system under which teachers are appraised twice a year and, based on these appraisals, either demoted to a lower level or promoted to a higher level on the career ladder.

Options for Cutting State Aid to Public Education

Under level II, option 1, the LBO proposed cutting full-day cut kindergarten to half-day classes, savings $38.9 million. Bilingual summer-school programs would be eliminated, saving $5.9 million. Under current law, school districts are required to offer half-day intensive summer bilingual-education classes to children unable to speak and understand English.

Option 1 of Level II would also increase the local fund assignment from 33.3 percent to 36.1 percent. The local fund assignment is the statewide aggregate share of the Foundation School Program paid by local school districts. The amount paid by a particular district is adjusted based on the ratio of its property wealth to total statewide property wealth; this ratio is multiplied by the current 33.3-percent factor to establish each particular district's local share. Raising the local fund assignment would increase the amount each school district pays to educate its students. The total savings to the state under level II, option 1 would be $203.6 million. In effect, a cut in the local-fund assignment would mean that local school districts would have to make up the loss in state aid in order to maintain their current level of services.

Option 2 under level II would also eliminate the bilingual summer school program for a $5.9 million savings and reduce kindergarten to half-day classes for a $40.4 million savings. (The savings from the same programs under option 1 and option 2 vary somewhat because the options treat the state proportion of the Foundation School Program differently.) However, instead of raising the local fund assignment as in option 1, option 2 would reduce the allotment for education improvement and support of the teacher career ladder from $140 to $95, for a savings of $92.5 million. Half of this allotment is used to support the career ladder and the other half is used for hiring other personnel and for general education improvement. Option 2 would also eliminate the allotment assisting school districts in employing and retaining experienced teachers, for a savings of $36.1 million.

In addition, option 2 would reduce the multiplier used for determining each district's vocational-education allotment from 1.45 to 1.20, for a savings of $29.1 million. For each student enrolled in an approved vocational-education program, a district is currently entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.45. The total savings to the state under level II, option 2 is $204 million.

Under option 1 of level III, bilingual summer-school funding would also be eliminated, and kindergarten would be cut back to half day for a $41.8 million savings. In addition, the local fund assignment would be increased to 42.1 percent for a savings to the state of $464.6 million. The total savings to the state under option 1, level III would be $506.4 million.

Option 2 of level III would also eliminate bilingual summer-school funding and cut back to half-day kindergarten classes for savings of $46.3 million. In addition, the allotment for education improvement and support of the career ladder would be eliminated, rather than just reduced as in level II, for a savings of $287.8 million. The experienced teacher allotment would be eliminated, for a savings of $33.6 million.

Additional state-aid programs would be reduced under option 2 of level III. The multiplier for figuring the vocational-education allotment would be reduced from 1.45 to 1.0, for a savings of $52.4 million. The multiplier for figuring the compensatory-education allotment would be reduced from 0.2 to 0.15, for a savings of $58.5 million. This allotment is granted to districts for educationally disadvantaged students. Option 2 of level III would also eliminate transition aid, for a savings of $17.5 million. This aid is given to school districts that have had to raise their local tax rates by at least eight percent because they received less money from the state under the new financing mechanism. The state would save a total of $496.1 million under option 2 of level III.

Because most state-agency budgets would have already been cut by one-third in level III, much of the additional $700 million cut under level IV would come from the Foundation School Program.

Option 1 of level IV would eliminate bilingual summer school and trim back state aid for kindergarten to fund a half-day only, for a savings of $34.9 million. In addition, the local-fund assignment would be increased to 55 percent, for a savings to the state of $1.188 billion. The total reduction would equal $1.223 billion.

Option 2 under level IV would build upon the option 2, level III cuts eliminating bilingual summer school, reducing state funding for kindergarten to half-day classes, reducing the vocational education multiplier, and eliminating the experienced teacher allotment, the career-ladder allotment, and transition aid, for a savings of $417.7 million. In addition, it would eliminate the price-differential index and the small-district adjustment, for a savings of $568.8 million. Also, the pre-kindergarten program, a half-day class for four-year-olds unable to speak or understand English or whose family income is below subsistence level, would be eliminated, for a savings of $37.6 million. The total savings under option 2, level IV would be $1.224 billion.

The Texas Association of Taxpayers

In addition to the options laid out by the Legislative Budget Office, the Texas Association of Taxpayers in its June 1986 report "Hard Choices: Spending-Side Approaches to the State Budget Problem," suggests that the Foundation School Program could also be cut by changing the timing of the replacement of textbooks. The new law requires books to be evaluated every six years instead of every eight years. The Association says this is expected to add millions each year to state textbook costs. It will increase costs by roughly 60 percent between 1986 and 1987.

A variation of this change might include a staggered replacement schedule depending on each text's subject. For example, computer science texts might change every 2 to 3 years because the field advances so quickly, while English literature texts might reasonably return to the old replacement cycle of every eight years.

Highway Department

The Texas Department of Highways and Public Transportation appropriation for fiscal 1987, including federal funds, is 2.8 billion. The Legislative Budget Office proposals would cut $321.1 million from this amount by amending the statutes dedicating general-revenue money to that agency.

The Texas Constitution and certain state statutes guarantee funding to the Highway Department by dedicating certain revenue sources. The Constitution dedicates 75 percent of motor-fuel tax revenue, most of vehicle-registration fee revenue, and all of motor-lubricant sales tax revenue to construct and maintain highways. By statutory dedication, the Highway Department receives 10 percent of the motor-vehicle sales tax, quarterly transfers from general revenue in an amount equal to one-eighth of the motor fuel taxes, and general revenue funds to the Farm-to-Market Road Fund.

The Legislative Budget Office proposal would cut $321.1 million by changing current statutes to:

--eliminate the transfer of 10 percent of the motor-vehicle sales tax and an amount of general revenue equal to one-eighth of the motor-fuel taxes, saving $198.4 million;

--make the Highway Department's voluntary savings under Gov. White's executive order (MW-36) mandatory, saving $24.6 million;

--make the Highway Department pay an additional $75 million to the Department of Public Safety that now comes from general revenue;

--eliminate the dedication of general revenue to the Farm-to-Market Road Fund saving $15 million;

--and to eliminate general-revenue transfers to the Highway Fund used to compensate for the loss of motor-fuel tax revenues resulting from the tax-exemption for gasohol, saving $8.1 million.

According to the Legislative Budget Office, budget reductions for the Highway Department would reduce funding for those contractor payments primarily used for upkeep of existing highways. Funding for new construction would not be affected. The elimination of general-revenue funding to the Highway Department would not affect matching federal highway funds. But because the Highway Department has more discretion using general-revenue funds than funds matched by federal highway grants, losing general-revenue money could, therefore, delay or alter certain projects funded solely from general revenue. Robert Lanier, chair of the State Highways and Public Transportation Commission, says that the LBO proposals would eliminate $3.27 million for road projects. Lanier also estimated that the reduction would result in the loss of 7,750 jobs.

Cigarette Tax Revenue, Parks, and the Battleship Homeport

The LBO has proposed eliminating the dedication of certain cigarette tax revenues for state and local parks and for the Homeport Fund.

The current cigarette tax is 20.5 cents per pack of twenty cigarettes. Since September 1979, one cent of this tax has been allocated to the State Parks Fund for planning, acquisition, development, and maintenance of state parks and historic sites. (Parks and Wildlife Code, sec. 11.035; Tax Code, sec. 154.603(b)(1)) One-quarter of this dedication is available for park operations. From 1979 to 1983, and beginning again in September 1985, another penny of the tax has been allocated to the Local Parks, Recreation and Open Space Fund to provide grants to localities for park acquisition and development, primarily to promote park development in urban areas. (Parks and Wildlife Code, sec. 24.002; Tax Code, sec. 154.603(b)(2))

The Home Port Fund is to be used for making public-works improvements beneficial to the proposed naval facility in Corpus Christi. Starting September 1, 1986, the penny that would have gone to the Local Parks Fund will instead be allocated to the Home Port Trust Fund, until $8 million has been allocated to that fund. Once this amount has been reached, the penny-per-pack allocation will revert to the Local Parks Fund. The Home Port Trust Fund is also scheduled to receive $17 million from the Water Assistance Fund, which is funded through the General Appropriation Act.

According to the LBO, elimination of most of the dedication of the cigarette tax for state and local parks would reduce appropriations in fiscal 1987 by $22.7 million at levels I and II. At levels III and IV the remaining dedicated funds, which are available for state park operations, would be eliminated, for a total reduction of $27.5 million. The LBO expects that at levels I and II the Parks and Wildlife Department would reduce funding for repairs and substantially slow the acquisition of new state park tracts and development of recently acquired state park land. If the portion of the dedication available for state park operations were eliminated, as proposed at levels III and IV, the LBO anticipates that 20 parks would be closed and 125 positions eliminated. Also, all state support for local-park projects would be eliminated at all levels of LBO proposals, eliminating any allocation of cigarette-tax revenues to the Local Park Fund.

Elimination of the allocations for the Homeport Fund would save another $25 million in 1987. The public-works improvements related to the proposed naval facility, including docks, dredging, bulkheads and utilities, would not be undertaken during fiscal 1987.

State Retirement Systems

The Legislative Budget Office has proposed reducing the state-contribution to the Employees Retirement System and the Teacher Retirement System as a way of reducing general-revenue expenditures for fiscal 1987.

Employees Retirement System (ERS). Level II reductions would lower the state contribution rate to the ERS from the current level of 7.4 percent of state-employee salaries to 6.89 percent for fiscal 1987 and beyond. The proposed reduction in the contribution rate would save the state $5.5 million in fiscal 1987. This action would increase the unfunded actuarial liability amortization period (the time it takes to pay off prospective claims on the system) from 18.8 years to 31 years.

Under level III of the LBO's proposed reductions the state contribution to the ERS would be lowered from 7.4 percent to 6.4 percent for fiscal 1987 and for the 1988-1989 biennium. It would go back up to 7.4 percent beginning in fiscal 1990. This proposal would increase the amortization period from 18.8 years to 21.1 years and save the state $10.8 million in fiscal 1987.

At proposed level IV reductions, the state contribution for fiscal 1987 and the 1988-1989 biennium would be lowered from 7.4 percent to 6 percent. Starting in fiscal 1990, the state contribution rate would be increased to 8 percent. This would cut $15.1 million from fiscal-1987 appropriations. The amortization period would increase from 18.8 years to 31 years.

Teacher Retirement System (TRS). No reduction in state contributions to TRS was proposed for level II. The reductions proposed for level III would lower the state contribution rate from 8 percent to 7.5 percent for fiscal 1987 and the 1988-1989 biennium. The rate would return to 8 percent beginning in 1990. The unfunded actuarial-liability amortization period (the time it takes to pay off current and prospective claims on the system) would increase from 38 to 40 years. The savings for fiscal 1987 would be $41.7 million.

Under level IV, the reduction in the state contribution to the Teacher Retirement System would save $83.4 million in fiscal 1987. The rate would be lowered from 8 percent to 7 percent for fiscal 1987 and for the 1988-1989 biennium only. The amortization period would increase from 38 to 41.7 years.

The proposed reductions lowering the state contribution rates to the retirement system would require statutory amendments. The Constitution sets a floor level of 6 percent for the state contribution rates, so no constitutional amendment would be required.

Reducing the state contribution rates would not jeopardize the state-retirement systems, but it would increase the unfunded actuarial-liability amortization period to a high of 31 years for the ERS and 41.7 years for the TRS. The State Pension Review Board has recommended that the amortization period be less than 40 years -- preferably 25 to 30 years. In 1985, the 69th Legislature enacted SB 713, by Sen. Grant Jones, which limited the amortization period for TRS and ERS to 31 years. The bill prohibits any changes in the benefit structure or rates of contribution that would result in an unfunded actuarial liability of more than 31 years. (When SB 713 was enacted last year, the TRS amortization period was calculated at 30.34 years. Since then, the TRS has modified its actuarial valuation methods and now calculates its amortization period at 38 years.)

Although the changes in the state-contribution rates would not make the retirement systems unsound, they would be less sound than they were before. The actuarial soundness of a system is calculated based on certain assumptions. Some of these assumptions vary naturally, like member longevity and investment returns. Some are considered constant, such as the rate of contribution. But if the contribution rate becomes a varying assumption, it is more difficult for actuaries to determine the real health of the retirement fund. The Legislature lowered the state-contribution rates to the TRS in 1983, and then lowered the state contribution rates to the ERS and TRS again in 1985. Both times the Legislature claimed that it would be a one-time reduction. Thus still another change in the "constant" state-contribution rate would make the actuarial soundness of the retirement systems even more difficult to determine.

There is a proposal before the House Appropriations Committee to defer the state's monthly contribution to the ERS and the Teacher Retirement System until August 1987. This deferral of $740 million in payments would help ease the cash-flow deficit in the General Revenue Fund. However, unless the state replaced the investment interest lost on the deferred contributions, the lost interest money would require that the amortization periods for the systems be lengthened. If the state wished to avoid lengthening the amortization periods by replacing the lost interest, then deferring the contribution payments for the short-term benefit of easing its cash-flow deficit would ultimately cost the state <u>more</u> in overall payments to the retirement systems.

CASH FLOW CONSIDERATIONS

Cash flow involves the timing of receipts and expenditures. Balancing a budget involves equalizing the total amount of revenue and expenditures. Insuring that there will be sufficient funds to cover expenses over the length of a budget period is not the same as insuring that there will be cash available to pay bills as they come due.

Cash Flow and the General Revenue Fund

The state of Texas has a complex fiscal-management structure based on 425 active funds. More than 60 percent of all state revenues and expenditures pass through one of these funds, the General Revenue Fund. The General Revenue Fund receives money from numerous fees and taxes and pays for the general operation of state agencies, salaries, and public education among other things. The other funds are dedicated for specific purposes, such as highways.

The General Appropriations Act allocates to each state agency a specific amount, by category, for each year of the biennium. It also specifies how much of each allocation will be paid from each fund. However, the Appropriations Act does not address the timing of expenditures within a fiscal year. The Comptroller may approve expenditures by an agency without regard to the amount of money available in the General Revenue Fund to cover expenses, as long as that agency has not spent more than its total allocation for the year.

Temporary cash shortfalls in the General Revenue Fund are permitted by law during the course of a biennium and are common. Although the Legislature has attempted to synchronize the flow of revenue into, and spending out of, the General Revenue Fund, the fund still runs large cash deficits for much of the year. The daily deficit for fiscal year 1985 averaged $431 million. Thus far in fiscal 1986, the average daily deficit has been more than $650 million. The worst daily deficit of the current biennium was recorded in December 1985, when the General Revenue Fund went $1.1 billion in the red.

Cash-Flow Deficit Options

The options currently available handle temporary cash deficits in the General Revenue Fund are interfund transfers, Special Demand Accounts and discounting of state warrants.

In 1979, the Legislature allowed the state to borrow from itself through transactions called interfund transfers. The Comptroller transfers unused money from other funds to cover warrants drawn on the General Revenue Fund when that fund temporarily runs out of cash. According to the State Treasury, the average daily cash balance in all funds is about $2.5 billion. Money in constitutional funds, such as the Permanent University Fund, cannot be borrowed to make up cash shortfalls in the General Revenue Fund, so only $1.3 billion is available for interfund transfers. At the current spending rate, by December 1986 the $1.3 billion available for interfund transfers will be exhausted.

The next option is to supplement interfund transfers with Special Demand Accounts. Special Demand Accounts have not been used since 1979, and they have never been used in conjunction with interfund borrowing. The State Treasurer has the authority to contract with Texas banks to cash state warrants and to hold the warrants until they can be redeemed by the State Treasury. The banks would hold the warrants in exchange for a fee. The fee would be paid through foregone interest on non-general revenue money deposited in the banks. Special Demand Accounts would be a short-term option (two and one-half months was the length of time they were used previously) and would depend on the getting banks to agree to the terms of the contract.

Although there would be $1.2 billion left in average daily balances in constitutional funds at the State Treasury after interfund transfers were exhausted, the Treasury estimates that banks would probably not be willing to hold more than $300 million under Special Demand Accounts due to the current weakness in the industry.

A final option would be discounting state warrants, which has not been done since 1950. A bank or a warrant company would have to agree to discount state warrants. (A warrant company is a business that cashes state warrants but charges a percentage of the amount cashed for the service.) The discounters would pay the bearer a percentage of the face value of the warrant in exchange for cashing the warrant and holding it until it could be accepted at the Treasury. For example, a state employee would ask a bank to cash a state pay warrant with a face value of $1,000. The bank could agree to cash the warrant, but for $900. In effect, the bank would make a $900 loan to the state by cashing its warrant, and the state employee would pay the interest on that loan. Thus discounting of state warrants would place the burden of the state fiscal crisis on state employees and vendors that do business with the state, assuming state banks or warrant companies would even be willing to cooperate.

For additional background on cash-flow options see House Study Group Interim News No. 69-6, State Fiscal Problems: Cash Flow in the General Revenue Fund, May 29, 1986.

Cash Flow and the Proposed 1987 Budget Reductions

In his revised revenue estimate dated July 24, Comptroller Bob Bullock projected that the General Revenue Fund would have a deficit of $2.9 billion when the current biennium ends on August 31, 1987. Bullock's total estimated deficit of $3.5 billion included all funds in the State Treasury. A $2.9 billion deficit in the General Revenue Fund could not be offset by borrowing from other state funds through interfund transfers. The other methods for handling a negative balance in the General Revenue Fund -- Special Demand Accounts and discounting of warrants -- are not viable options, since these methods rely on banks to loan the state money, and Texas banks are not in a financial position to make such loans at this time. Even if the banks were in a stronger position, the amount and the terms of the loans would be prohibitive. Unless the cash-flow problem is solved by December 1986, the State Treasurer may not be able to pay the state's bills, and state government could grind to a halt.

The State Treasury has calculated the effect that the estimated deficit of $2.9 billion during the current biennium would have on cash flow in the General Revenue Fund in fiscal 1987, assuming maximum interfund borrowing of $1.3 billion:

Month	Cash-Flow Monthly Low Point	Maximum Interfund Borrowing	Cash Flow Shortfall
	(in millions of dollars)		
September	-713	1300	0
October	-1156	1300	0
November	-1191	1300	0
December	-1760	1300	-460
January	-1918	1300	-618
February	-1818	1300	-518
March	-2104	1300	-804
April	-2059	1300	-759
May	-2303	1300	-1003
June	-2687	1300	-1387
July	-3003	1300	-1703
August	-3016	1300	-1716

The Legislative Budget Office has presented the House Appropriations Committee with a set of alternatives reducing appropriations for fiscal 1987 from a reduction of $754.9 million at level I to $2.950 billion at level IV. Level I cuts are designed to solve cash flow problems through June 1987. The other three proposed budget reduction levels are designed to take care of the cash flow problem until August 31, 1987.

Another way to attack cash-flow problems would be to place a rider in the appropriation act that would limit the amount an agency could spend each month. However, it may be difficult to place a blanket spending limit on agencies with widely varying missions and spending needs.

The budget-reduction alternatives proposed for fiscal year 1987 would only help reduce the cash flow deficit if the proposed cuts affect direct expenditures from the General Revenue Fund. For example, all four budget reduction levels would reduce highway funding by $321.1 million. But since those funds are already being borrowed through interfund transfers, that reduction would not affect overall cash deficits in the General Revenue Fund.

Certain proposed general-revenue spending reduction alternatives would have an identifiable monthly impact on cash flow. These reductions include eliminating the three-percent employee salary increase for fiscal 1987, cutting the Foundation School Program, and reducing the state contributions to the Employee Retirement System and the Teacher Retirement System. Requiring universities to use a portion of university-controlled Local Funds to replace their general-revenue cuts would also help cash flow by leaving an additional $260 million in the General Revenue Fund.

In addition to reducing state contributions to the Employee Retirement System and the Teacher Retirement System, deferring allocations to those systems by about $62 million a month, as proposed by the Legislative Budget Office, would reduce the monthly deficit in the General Revenue Fund for the first 11 months of the biennium. However, the total deferred amount of $740 million would still have to be paid in August 1987.

Other Cash-Flow Options -- The Comptroller's Report

In a July 25 report, Comptroller Bob Bullock's Economic Analysis Center examined options to reduce or eliminate cash deficits in the General Revenue Fund for fiscal 1987. The cash-flow options examined would mix-and-match the methods currently available to reduce cash deficits, such as interfund borrowing and Special Demand Accounts, with budget-reduction alternatives, such as the Level II cuts of $1.3 billion proposed by the Legislative Budget Office.

The cash-deficit-reduction options examined by the Comptroller's office are based on variations of the following assumptions: (1) maximum use of interfund borrowing; (2) use of Special Demand Accounts; (3) a cash cushion from one-time revenues from settlement of the "stripper" and Exxon oil overcharge lawsuits; (4) slight alteration in the timing of the state-employee payroll and the Foundation School Program grants (there would be no delay in scheduled payments; only internal accounting procedures would be different); (5) delay in transfer of state contributions to the retirement systems until August 1987; (6) use of balances in suspense accounts (trust accounts that temporarily hold funds for different purposes) for interfund borrowing; and (7) borrowing from the state university Local Funds.

Two of the cash-flow options examined by the Comptroller's office would eliminate the cash deficit in the General Revenue Fund for all of fiscal 1987. One of these options assumes level II budget cuts and an increase in the state sales tax from 4 1/8 percent to 5 percent; the other option assumes level II budgets cuts, delaying retirement system payments until August 1987, plus tapping state university Local Funds to the maximum extent. Four of the options examined would eliminate the cash deficit for most of fiscal 1987, while the remaining two would ease the cash deficit only during the first three-to-four months of fiscal 1987.

ADDITIONAL BUDGET-CUTTING PROPOSALS

Lt. Gov. Bill Hobby's Budget Plan

Lt. Gov. Bill Hobby has just completed an eight-city tour across the state promoting a plan to eliminate the fiscal 1987 budget deficit by a combination of spending cuts and revenue increases. Hobby has suggested reducing spending in fiscal 1987 by $650 million. This reduction would be accomplished largely by implementing the $370 million in reductions identified by state agencies in response to Gov. White's executive order. Additional reductions would be made in selected items in the Foundation School Program for a $65 million reduction, while other agencies would be cut or abolished to cut another $29 million. By foregoing the scheduled three-percent increase in state-employee salaries and requiring a "rollback" of the three-percent raise granted in fiscal 1986, $186 million could be cut.

Lt. Gov. Hobby has advocated making up the rest of the budget shortfall by increasing revenue. Part of this would be accomplished by expanding the base of the sales tax to include all services; only sales of food and medicine would be exempt. He proposes increasing the rate of the state sales tax from the current 4 1/8 percent, along with possible increases in the motor-fuels tax or the corporate franchise tax. (All of these taxes were raised in 1984. The sales tax was increased from 4.0 percent to 4 1/8 percent, the gasoline tax was raised from 5 cents per gallon to 10 cents per gallon, the diesel tax from 6.5 cents per gallon to 10 cents per gallon, and the corporate-franchise tax from $4.25 per $1000 of taxable capital and surplus to $5.25.) One option explicitly rejected by Hobby was institution of a corporate or personal income tax, which he says would discourage business initiative.

Senate Committee on Agency Funds Magagement

The Senate Committee on Agency Funds Management, chaired by Sen. John Leedom, has recommended changes in the administration of state government that it believes could save the state $250 million per year.

The Committee has recommended that a Services Management Commission be established, headed by a commissioner appointed by the governor, lieutenant governor, and the speaker. The commission would consist four divisions: an Office of Travel and Transport to manage the state's fleet of automobiles and aircraft and serve as a central travel agency for all state-employee travel; a Division of Information and Telecommunications to insure efficient use by state agencies of computers and communications equipment; a Division of Printing to provide a central state printer and supervise facilities management;

and a Division of Energy Efficiency to promote energy conservation, which would be transferred from the Public Utilities Commission.

The committee also recommended instituting a productivity bonus plan to award agencies able to doe their work without spending their full appropriations. One-quarter of any unspent balance would be returned to employees of the agency, one-quarter would be retained by the agency, and one-half would be returned to the General Revenue Fund or other appropriate fund. The committee supports closer surveillance of expenditures for organization membership dues, which currently cost $7 million per year. The committee is also considering proposals to contain the cost of health-insurance payments by the state.

Implementation of HJR 72

In November 1985, the voters approved HJR 72, which permits the Legislature to require state agencies to obtain approval before spending or making an emergency transfer of any appropriated funds. The Legislature may impose this requirement by a rider in the appropriations act or by a separate statute. The amendment does not specify from whom this prior approval might be sought.

Constitutional amendments similar to HJR 72 but more detailed had been proposed in the past, but they were not approved by the voters. The details of those rejected amendments might serve as the basis for implementing legislation for HJR 72. The amendment proposed in 1979 would have empowered the Legislature to give the governor control over the expenditure of appropriated funds, except funds constitutionally dedicated to specific purposes. The budget-execution actions by the governor would have required the approval of a budget-execution committee consisting of the governor, the lieutenant governor, the speaker, the chair and vice-chair of the Senate Finance Committee, and the chair and vice-chair of the House Appropriations Committee.

The more-detailed amendment proposed in 1981 and rejected by the voters would have empowered the Legislature to authorize a state finance-management committee to manage the expenditure of appropriated funds, except constitutionally dedicated funds. The committee would have consisted of the governor, lieutenant governor, the speaker, and the chairs of the Senate Finance Committee, the Senate State Affairs Committee, the House Appropriations Committee, and the House Ways and Means Committee.

The Budget and Finance Committee of the Texas Commission on Economy and Efficiency in State Government has established a task force, chaired by Tom Keel, Executive Director for Finance and Administration of the University of Texas System, to consider legislation to implement HJR 72. The task force does not intend to draft legislation for the special session and has not yet reached any agreement on policy; it is not scheduled to deliver a proposed bill to the Budget and Finance Committee of the Commission until next month. Any proposal accepted by the Commission would be delivered to the Legislature with the rest of the Commission's report in January, 1987. According to Task Force chair Keel, the interim budget authority being considered by the Task Force would probably not cope with a budget problem of the size currently facing the state.

OTHER POSSIBLE SPECIAL SESSION ITEMS

In his proclamation calling the special session, Gov. Mark White stated that, in addition to spending cuts, he may ask the Legislature "to consider and pass such other items as submitted from time to time by the Governor after the session convenes." This section outlines some additional items that the Legislature might consider.

State Lottery

Legislation proposing a state lottery has been pre-filed. HJR 4 by Rep. Ron Wilson and HJR 5 by Rep. Larry Evans are proposed constitutional amendments to permit the Legislature to adopt a lottery. HB 8 by Rep. Larry Evans is proposed implementing legislation for a lottery contingent on approval of a constitutional amendment. Under the provisions of HB 8 and HJR 4, 40 percent of the gross revenue from the sale of lottery tickets would be deposited in the General Revenue Fund, and at least 45 percent of lottery revenue would be awarded to prizewinners.

The Comptroller estimated in May 1986 that if Texas were to duplicate the experience of other populous states in ticket sales per state resident, a lottery could net the state about $600 million a year, once it was fully operational.

Banning the Income Tax

Several proposed constitutional amendments to prohibit a state income tax have been pre-filed. HJR 1 by Reps. Stan Schlueter, Bill Haley, and Bill Ceverha would delete from Art. 8, sec. 1 of the Constitution the authority of the Legislature to enact a personal income tax. HJR 2 by Rep. Charles Evans would also prohibit a personal income tax but specifically allow a tax on the income of business trusts. HJR 6 by Reps. Schlueter and Haley and HJR 7 by Rep. Tom Waldrop and others would delete legislative authority to enact a tax on personal or corporate incomes.

During the 1985 regular session, the House, by a vote of 106 to 31, approved HJR 37 by Reps. Haley and Schlueter, which would have eliminated legislative authority to enact a tax on personal or corporate incomes. The joint resolution died in the Senate Finance Committee.

District Court Filing Fee

On July 2, the Texas Supreme Court ruled that the increase in the district-court filing fee from $25 to $75, enacted in 1985 as part of the Omnibus Fee Act (HB 1593), violated the Texas Constitution. The General Revenue Fund would have received $40 of the increased fee, and the district-court clerks would have kept the remaining $35.

The Supreme Court held that the allocation of a portion of the court filing fee to general revenue, rather than specifically to court-related services, was equivalent to a tax levied on litigants for their constitutional right of access to the courts. The court also ruled that the entire $50 increase in the fee violated the bill-caption requirement of Art. 3, sec 35 of the Constitution, since the caption of HB 1593 did not fairly inform a reader that the bill affected the judiciary.

The Legislature could recapture the $11,335,000 that the fee was estimated to generate for the General Revenue Fund in fiscal 1987 by enacting a properly captioned bill that would dedicate state revenue generated by an increased fee to court-related purposes. This dedicated revenue could be used to replace general-revenue funds currently appropriated to court purposes.

Changes in Banking Law

Interstate Banking

Current Texas law prohibits ownership of Texas banks by out-of-state banks or bank holding companies. Testifying to a joint meeting of the House Financial Institutions Committee and the Senate Economic Development Committee on July 31, Banking Commissioner James Sexton and State Treasurer Ann Richards advocated opening the special session agenda to consideration of an interstate banking bill. Sexton and Richards supported full nationwide non-reciprocal interstate banking -- permitting a bank or bank holding company from any other state to acquire a Texas bank or bank holding company regardless of whether a Texas bank or bank holding has the same right to buy a bank in the acquiring bank's state.

Both Sexton and Richards voiced concerns over diminishing public confidence in Texas banks during the current economic downturn as 12 Texas banks have already failed this year, and they pointed out the immediate need for an infusion of new capital and deposits. However, Sexton did acknowledge that a nationwide nonreciprocal banking bill would not allow healthy Texas banks an opportunity to grow through interstate acquisitions, and would allow Texas banks to be purchased by large New York banks with a significant amount of risky loans outstanding to Mexico and South American countries.

A bill drafted by the Banking Department would impose several conditions on any non-Texas based holding company that desired to purchase a Texas bank. No non-Texas bank could control more than a certain percentage of deposits held by banks within Texas, nor could they own any "non-bank" (limited service) bank or savings and loan institution in Texas. The majority of the board of directors of a bank acquired by an out-of-state company would have to consist of Texas residents who were not employees of the acquiring bank. Only banks that had been operating for five years could be acquired.

Arizona recently passed a similar nationwide nonreciprocal interstate banking law. Of the ten largest commercial banks in the state, six will soon be acquired by banks from New York, Los Angeles, Milwaukee, and New Jersey. One is already owned by a Los Angeles bank. One is merging with another Arizona bank; two currently remain independent and locally owned.

For a detailed discussion of interstate banking and its potential impact on Texas, please see House Study Group Special Legislative Report No. 123, Interstate Banking, Jan. 30, 1986.

Branch Banking

The Texas Constitution prohibits branch banking. However, the Texas Banking Code permits certain drive-in/walk-up facilities as far as 20,000 feet from the central building of a bank. On June 6, 1986, Attorney General Jim Mattox issued an opinion concluding that the law permitting such detached facilities violates the constitutional ban on branch banking.

At the July 31 joint hearing of the House Financial Institutions Committee and the Senate Economic Development Committee, Banking Commissioner James Sexton testified that the only way to assure that all detached facilities are not found unconstitutional would be for the voters to approve a constitutional amendment permitting branch banking. He favors the institution of city- and county-wide branching, with statewide branching permitted only for takeovers of failed banks.

For additional background on the branch-banking issue, please see House Research Organization Interim News No. 69-9, Banking Facilities -- The Attorney General's Branch-Banking Opinion, July 7, 1986.

Prison Issues

Since his December 1980 ruling that the Texas prison system violates the constitutional rights of inmates by subjecting them to cruel and unusual punishment, U. S. District Judge William Wayne Justice of Tyler has approved a series of settlement agreements between the state and attorneys representing inmate interests. The settlement agreements outline steps that the Texas Department of Corrections must take to correct constitutional violations found in the state's prison system, such as overcrowding, understaffing, and insufficient health care. On January 7, 1986, attorneys for the inmates filed a motion asking Judge Justice to find the TDC in contempt of court for not abiding by provisions of the settlement agreements. Judge Justice presided over an evidentiary hearing on the contempt motion from June 23 to July 1 and is expected to make a decision soon. Should Judge Justice rule in the inmates' favor, the state may have to pay as much as $4,740,000 per month in fines, plus lump-sum payments of $831,630 in monetary relief.

How the Legislature deals with the TDC budget during the special session could affect Judge Justice's decision. Twice during the contempt hearing, he asked if the Governor planned to add TDC funding to the special-session agenda.

In his post-hearing brief to the court, the Attorney General has asked Judge Justice to suspend judgment until the regular legislative session in January on whether the state must appropriate additional funds for the TDC to remain in compliance with the settlement agreements. The state argues that it should have time to address the TDC's needs through the normal budgetary process, rather than be forced to make a hasty decision during a special session.

The Attorney General's office believes the Legislature <u>may</u> be able to avoid appropriating more money to the TDC during the special session if the department can identify unspent funds in the current budget that could be transferred during fiscal 1987 to court-ordered projects. The TDC has pinpointed a $33,790,865 savings in the 1986-87 budget that could be spent on court-ordered reforms. The savings would come primarily from a freeze on nonessential hiring and capital expenditures that the TDC imposed in response to the Governor's executive order directing state agencies to reduce spending by 13 percent.

The TDC has already outlined where the $33 million savings could be transferred should the Legislature permit the department to keep the unspent funds. Of the total, $14,555,138 would be used to hire additional security personnel. Specifically, TDC would hire 1,955 additional correctional officers and 282 supervisory personnel. These security employees would be used to staff new facilities and to place officers in existing cell blocks and dormitories, as required by one of the settlement agreements. (This agreement requires the TDC to maintain a ratio no lower than one security employee for each six prisoners, based on TDC's actual population.) Other areas where TDC proposes to use the money include $2.4 million for building-maintenance personnel and equipment, $2.3 million for food-service personnel, $2.8 million for security support staff, and $2.7 million to purchase materials to manufacture officer uniforms, and bedding, uniforms, and towels for inmates.

The General Appropriations Act restricts how the TDC can transfer funds. TDC has the authority to transfer funds from one sub-item to another sub-item within program appropriations for central administration, support services, security and correctional operations, and health services. Also, it can carry over unspent money from fiscal 1986 to fiscal 1987. However, in order to have optimum flexibility in complying with the court orders, TDC is requesting that the Legislature grant the department complete transferability authority of all line items.

Even if the TDC is allowed to transfer the $33 million in identified savings to other items, the TDC says $33 million would still not be enough to comply with the settlement agreements through fiscal 1987. As a result, the department is requesting the Legislature to appropriate $10.2 million during the special session in order that the TDC can continue to meet court-ordered medical staffing requirements through fiscal 1987. Of the $10.2 million, $2.4 million would be used to hire medical personnel such as nurses and medical assistants and $4.4 million would be used to hire psychiatric aides, with the remainder used to hire other psychiatric personnel such as psychiatrists, psychologists, and nurses.

Lease/Purchase

As part of the settlement agreements in the Ruiz lawsuit, the state has agreed to keep a limited number of inmates at each prison and to provide at least 50 square feet of space per inmate in all dormitory-style facilities. On Sept. 1, 1987, the first phase of this provision will become effective. In order to remain in compliance with the court-approved plan, the TDC may be required either to release almost 3,000 inmates or to provide additional prison space.

To avoid releasing prisoners, the Legislature last session authorized the construction of ten 200-bed "trusty camps," minimum-security facilities for low-risk inmates, and a 2,250-bed prison near Palestine. Funding for construction was to be raised by the sale of about 3,800 acres of unused prison property near Houston. But the TDC has been unable to sell the land.

In order to fund the Palestine facility, the TDC has entered into a lease/purchase agreement. Construction of the prison is being financed by private investors and is expected to be completed by the September 1987 deadline. If the state decides to purchase the prison, it will cost $67,132,981. If the state opts for leasing the facility, the leasing price would be determined by the interest rate at that time. However, the construction bid specified that the lease price would not exceed $9.1 million per year. A similar lease/purchase arrangement is also being considered for funding the construction of the trusty camps. According to the terms of the construction agreement to build the Palestine facility, Legislature need not decide whether to lease or purchase the prison until June 1987, so no legislative decision will be required during the special session.

Access to State Mineral Rights

Land Commissioner Garry Mauro, Sen. Ted Lyon, Rep. Ed Emmett, and Rep. Keith Oakley have called on the Governor to open the call for the special session to include legislation granting the state a means of access to Permanent School Fund lands that are "land-locked," i.e. surrounded by privately owned land. According to the General Land Office, the state has no legal access to 500,000 acres of state-owned surface rights and 7.1 million acres of land to which the state owns the mineral rights. Income from mineral development on this land is dedicated to the Permanent School Fund (PSF). The Land Office estimates that access problems have caused an annual loss to the PSF of from $5 to $20 million and an annual loss of $360,000 to $1 million to the Available School Fund, which receives the investment income from the PSF.

While state law already permits access to "land-locked" state land to develop oil and gas interests, it cannot require access to develop other minerals such as copper, lead, molybdenum, silver, and zinc. One reason that some landowners have refused to permit access to the state to extract these minerals is because their extraction would involve strip-mining. The proposed legislation would allow the General Land Office to condemn private property to allow sufficient access to reach its mineral interests.

School Discipline

HB 72, the omnibus education act passed in the 1984 special session, requires school officials to use alternative education programs for problem students whenever possible, before suspending or expelling them. Some educators have complained, however, that the new law overly restricts the ability of school officials to remove incorrigible and dangerous students from school.

HB 5, a bill prefiled by Rep. David Hudson, would allow school officials to suspend students who present a danger to themselves or others, rather than requiring that they first be removed to an alternative education program. A similar bill, HB 408 by Rep. Bill Haley, died in the closing days of the regular session after it had been passed in the House and amended and passed in the Senate. Gov. White has indicated that he may add a school-discipline bill to his special-session call.

Other Items

A number of other topics have been suggested as possible additions to the special-session agenda. Some legislators have expressed interest in reviving legislation to allow pari-mutuel wagering on horse racing and on dog racing. A bill may be introduced to institute a corporate-profits tax. Proposed constitutional amendment to permit initiative and referendum has been pre-filed. Bills creating an offense to disclose information obtained from a criminal investigation, setting a ceiling on the number of state employees, and establishing grievance procedures for state employees have also been pre-filed.